California Department of Consumer Affairs

Legal Guide LT-6

DAMAGED OR DESTROYED RESIDENTIAL RENTAL UNITS: A FACT SHEET FOR LANDLORDS AND TENANTS

October 1996

In recent years, Californians have had to deal with the repairing and rebuilding process following natural disasters. When such events occur, some people are unable to live in their rental dwellings because of severe damage. Others are able to live in their dwellings, but major repairs are necessary to make them "habitable" once again. Others may face only minor repairs and cleanup of their residences.

When a rental unit has been damaged, the repair process necessarily will involve both the landlord and the tenant. To make the repairing and rebuilding process go more smoothly and quickly, tenants and landlords (or property managers) need to work cooperatively and patiently with each other.

Unless the rental unit has been totally or partially destroyed, the rules which normally govern the landlord-tenant relationship will apply to the repair process. (The rules which apply if the rental unit has been destroyed are discussed below.) If the rental unit is subject to a local rent control ordinance, the terms of the ordinance may govern instead of the rules discussed in this legal guide.

The Department of Consumer Affairs hopes that the following information will help landlords and tenants work together to resolve the problems resulting from the damage or destruction of rental premises and, if possible, return them to a habitable and livable condition.

What kinds of repairs must a landlord make?

Landlords must repair problems which make a rental unit unfit to live in, or "uninhabitable." Before renting a unit, a landlord must make the rental unit fit for habitability. Additionally, while the unit is being rented, the landlord must do maintenance work and repairs which are necessary to keep the unit liveable.[1] However, a landlord is not responsible for repairing conditions which were caused by the tenant or the tenant's guests or children.

Under the "implied warranty of habitability," the landlord is responsible for repairing conditions that seriously affect the rental unit's habitability.[2] Whether the landlord or the tenant is responsible for making less serious repairs is usually determined by the rental agreement.

The law is very specific as to what kinds of conditions make a rental uninhabitable. These are discussed below.

What kinds of repairs must a tenant make?

Tenants are required by law to take reasonable care of their rental units and their common areas such as hallways and outside areas. That means that a tenant must act to keep those areas in good condition.[3] Tenants also must repair all damages which result from their neglect or abuse, and must repair damages caused by anyone for whom they are responsible, such as guests, children, or pets.[4]

What kinds of conditions make a rental unit legally uninhabitable?

There are many kinds of repair problems which could make a rental unit unlivable. The implied warranty of habitability requires landlords to maintain their rentals in a condition fit for living.[5] In addition, the rental unit must "substantially comply" with building and housing code standards that materially affect tenants' health and safety.[6]

The basic minimum requirements with which the landlord must substantially comply are the following:[7]

•Roofs and walls must not leak.

•Doors and windows must not be broken.

•Plumbing and gas must work.

•Hot and cold water must be provided.

•Sewer or septic system must be connected and operating.

•Heater must work and be safe.

•Lights and wiring must work and be safe.

•Floors, stairways and railings must be maintained and safe.

•When the tenant first moves in, the rental unit must be clean, with no trash, rodents, or other pests.

•Enough cans or bins for trash.

In addition to these requirements, each rental unit must have all of the following:

- A working toilet, wash basin, and bathtub or shower; the toilet and bathtub or shower must be in a room which is ventilated and allows for privacy;

- A kitchen with a sink, which cannot be made of an absorbent material such as wood;

- Natural lighting in every room through windows or skylights; windows in each room able to open at least halfway for ventilation, unless a fan provides mechanical ventilation; and

- Safe fire or emergency exits leading to a street or halfway; stairs, hallways and exits kept litter-free; and storage areas, garages and basements kept free of combustible materials.[8]

If for example, the roof leaks, it is the landlord's responsibility to fix it, because the implied warranty of habitability requires that the roof not leak. But the implied warranty of habitability does not require the landlord to repair damages that the tenant or the tenant's guests cause, or to clean up trash that the tenant or the tenant's guests leave around.[9]

Are there any limitations on the landlord's duty to keep the rental unit habitable?

Yes. Even if one of the conditions listed above exists and makes the rental unit not livable, a landlord may not be legally required to repair the condition if the tenant has not fulfilled the tenant's responsibilities.

In addition to generally requiring a tenant to take reasonable care of the rental unit and common grounds, the law specifically lists certain kinds of things a tenant must do to keep the rental area livable. If a tenant fails to do one of these things, and the tenant's failure has either substantially caused the unlivable conditions to occur, or has substantially interfered with the landlord's ability to repair the unlivable condition, the landlord has no duty to repair the condition.[10]

Tenants must:

•Keep their rental unit and those common areas which they use clean and sanitary.

•Dispose of their garbage in a clean and sanitary manner.

•Properly use all electrical, gas and plumbing fixtures and keep them in a clean and sanitary condition.

•Not damage or remove any part of the rental unit, facilities, equipment or common grounds and not permit any person who is in the rental unit with the tenant's permission to do any of those things.

•Use the rental unit and the rooms within it for their intended purpose (for example, use the living room as a living room, not as a kitchen).

However, if a landlord and tenant agree in writing that the landlord is to clean the rental unit and dispose of trash, and the landlord fails to do so, then the landlord's duty to repair would exist.[11]

Who is responsible for other kinds of repairs, such as repairs needed for a refrigerator or washing machine?

As for less serious repairs, the rental agreement may provide for either the tenant or the landlord to fix that particular item. Items of such an agreement - refrigerators, washing machines, parking places or swimming pools - are usually considered "amenities" - which in their absence do not render a dwelling unit unfit for living. Such agreements are usually enforceable in accordance with the intent of the parties.

Can a landlord and tenant agree that the tenant is to make all repairs, of whatever kind?

In certain situations, the landlord and the tenant may agree in the rental agreement that the tenant is responsible for **all** repairs and maintenance, in exchange for a lower rent fee.[12] Such an agreement must be made in good faith, and the tenant should sign it only if the tenant is sure that he or she is able to make all the necessary repairs. Ultimately, the landlord is responsible to the city, county, or state for maintaining the property as required by state or local law.

How might a tenant go about getting repairs made by the landlord?

If the tenant believes that the rental unit needs repairs, and that the repairs are the landlord's responsibility, the tenant should notify the landlord. Since a rental unit is a business investment, most landlords want to help keep the rental unit safe, clean, and attractive. It's best to notify the landlord of any damage or defects both by a telephone call and a letter. The tenant should date the letter and keep a copy for his or her records, and mail or deliver the original letter to the landlord, manager, or agent. It is best to send the letter by certified mail so that the tenant gets a receipt for it, or, if delivered in person, to ask the landlord or manager for a receipt. The tenant's copy of the letter and the receipt will be proof that the landlord was notified, and also proof of what was said.

If the landlord doesn't make the requested repairs, and doesn't have a reasonable justification for not doing so, the tenant may have several remedies, depending on the seriousness of the repairs. Each of the remedies has its own requirements and risks, so the tenant must choose carefully.

The "repair and deduct" remedy.

The "repair and deduct" remedy allows the tenant to deduct money from the rent to pay for repairs of conditions that are covered by the implied warranty of habitability.[13] These include serious habitability defects that are related to health or safety, such as a leak in the roof during the rainy season, no hot running water, a gas leak, or a defective sewer system.

As a practical matter, the repair and deduct remedy allows the tenant to make needed repairs of serious conditions without filing a lawsuit against the landlord. Because this remedy involves legal technicalities, the tenant may want to talk to a lawyer or legal aid society before using it. The basic requirements and steps for using the repair and deduct remedy are:

1.The defects must be serious and must relate to basic habitability (fitness for living).

2.The tenant cannot have used this remedy more than once before in the last twelve months.

•Tenants can only use the repair and deduct remedy twice in any twelve-month period.

3.The tenant or the tenants family or guests did not cause the damages that necessitate the repairs.

•It the tenant or people for whom the tenant are responsible caused the defects, the tenant can't use this remedy.

4.The tenant must inform the landlord, either orally or in writing, of the needed repairs.

•It's best that this notice be in writing. It should describe the problem and the required repairs in sufficient detail. The written notice should be dated and a copy kept. It is best to either send it by certified mail, or ask for a receipt if it is delivered in person.

5.The tenant must give the landlord a reasonable period of time to make the needed repairs.

•What is reasonable depends on the defects and the type of repairs that are needed. The law usually considers 30 days to be reasonable, but if the problem makes the rental unit unfit for living, a shorter period may be considered reasonable. For example, if the heater is broken and it is very cold outdoors, two days may be considered reasonable (assuming that a heating contractor or other person capable of making adequate repairs is available within that time period).

7.If the landlord doesn't make the needed repairs within a reasonable period of time, the tenant may either make the repairs, or hire someone to do them, and then deduct the cost from the tenant's rent when due. All receipts should be kept.

8.The cost of repairs cannot exceed one month's rent

Risks: The landlord can sue the tenant to recover the money deducted from the rent, or attempt to evict the tenant for nonpayment of rent. If the tenant deducted money for repairs not covered by the remedy, or didn't give the landlord a reasonable time to make repairs, a court may order the tenant to pay the full rent even though the tenant paid for the repairs.

The landlord may try to evict the tenant or raise the rent to punish the tenant for using the repair and deduct remedy. This action is know as a "retaliatory eviction." The law prohibits this type of eviction, with some limitations.[14]

Abandoning an uninhabitable rental as a remedy.

The law allows the tenant to abandon (leave) a rental unit that is uninhabitable (has such serious problems or defects that the tenant's health and safety will be affected).[15] This remedy is basically an alternative to the

repair and deduct remedy, and has most of the same basic steps. If the repairs which are needed would cost more than one month's rent, the tenant might choose to leave the rental unit rather than using the repair and deduct remedy. If a tenant uses this remedy properly, then once the tenant has abandoned the rental unit the tenant is no longer responsible for paying further rent.[16] However, as with the repair and deduct remedy, the tenant can use the abandonment remedy only if the landlord has violated the implied warranty of habitability.

The basic requirements and steps for abandoning a rental unit are:

1.The defects must be serious and must relate to basic habitability (fitness for living), making the rental unit uninhabitable.

2.The tenant's family or guests must not have caused the defects that necessitate the repairs.

•If the tenant or people for whom the tenant are responsible caused the defects, the tenant cannot use this remedy.

3.The tenant must inform the landlord either orally or in writing of the needed repairs.

•It's best that this notice be in writing. It should describe the problem and the required repairs in sufficient detail. The written notice should be dated and a copy kept. It is best if the tenant either send it certified mail, or ask for a receipt if the tenant deliver it in person.

4.The tenant must give the landlord a reasonable period of time to make the needed repairs.

•What is reasonable depends on the defects and the type of repairs that are needed. The law usually considers 30 days to be reasonable, but if the problem makes the rental unit unfit for living, a shorter period may be considered reasonable.

5.If the landlord doesn't make the needed repairs within a reasonable period of time, the tenant should notify the landlord in writing of the reasons for moving and then actually move out, returning to the landlord all keys which the tenant has. A copy of the notice should be kept.

•While the law does not require the tenant to notify the landlord in writing of the reasons for moving, it is a good idea to do so. The tenant's letter may discourage the landlord from suing to collect additional rent or other damages. A letter also documents the reasons for moving in the event of a later lawsuit, so be sure to keep a copy. If possible, the tenant should take pictures or have local health or building officials inspect the rental before he or she moves.

Risks: The defects may not be bad enough to make the rental unit legally uninhabitable. The landlord may sue to collect additional rent or damages.

Withholding rent as a remedy.

The tenant has another option for getting repairs made -- the "rent withholding" remedy. By law, the tenant is allowed to withhold (stop paying) some or all of the rent if the landlord does not fix serious conditions that are covered by the implied warranty of habitability.[17]

In order to withhold rent, the defects or needed repairs must be more serious than would justify use of the repair and deduct remedy. The conditions serious enough to justify withholding rent which were outlined in a California Supreme Court case, Green v. Superior Court,[18] and are listed below as examples.

•Collapse and nonrepair of the bathroom ceiling.

•Continued presence of rats, mice and cockroaches.

•Lack of any heat in four of the apartment's rooms.

•Plumbing blockages.

•Exposed and faulty wiring.

• An illegally installed and dangerous stove.

In the Green case, all of these conditions were present, and there also were many violations of the local housing and building codes. In order to prove a violation of the implied warranty of habitability, the tenant will need evidence of the needed repairs. Therefore, photographs, witnesses, and copies of letters informing the landlord of the problem would be very helpful if the tenant goes to court.

Before the tenant stops paying rent, he or she should check with a legal aid society, lawyer, or tenant organization to help determine if this is the appropriate remedy to use. The basic requirements and steps for using the rent withholding remedy are:

1.The needed repairs or defects must seriously affect health and safety.

•The conditions must be serious enough to make the rental uninhabitable.

2.The tenant or the tenant's family, or guests must not have caused the defects or needed repairs.

•If the tenant or people for whom the tenant are responsible caused the defects, this remedy cannot be used.

3.The tenant must inform the landlord either orally or in writing of the needed repairs. It's best that this notice be in writing. It should describe the problem and the required repairs in sufficient detail. The written notice should be dated, and a copy kept. It is best if the tenant either sends it by certified mail, or ask for a receipt if the tenant delivers it in person.

4.The tenant must give the landlord a reasonable period of time to make the needed repairs.

•What is reasonable depends on the defects and the type of repairs that are needed.

5.If the landlord doesn't make the needed repairs within a reasonable period, the tenant can withhold the rent. The tenant can continue to withhold the rent until the landlord makes the repairs.

6.The tenant should save withheld rent money and not spend it. The tenant probably will have to pay the landlord some or all of the rent once the repairs are made.

In addition, if the tenant withholds rent, the tenant should put the rent money into a special bank account (called an escrow account) and notify the landlord in writing that rent is being withheld and why. This is not required by law, but is a very good thing to do for three reasons.

First, depositing the money in an escrow account will assure that the tenant will have the money needed to pay reasonable rent once the repairs are made. Usually tenants are required to pay, usually based on the value of the rental unit, taking into consideration the repairs needed, their landlord some reduced rent for the time they withheld rent. Rarely does a judge totally excuse all rent.[19]

Second, putting the rent money in an escrow account proves to the court that the tenant didn't withhold the rent just because because the tenant was merely trying to avoid paying the rent. The tenant should also bring rental receipts or other evidence to show that he or she has been reliable in paying past rents.

Third, most legal aid societies and lawyers will not represent a tenant who has not deposited the withheld rent money in an escrow account.

Hopefully, the tenant and the landlord will be able to agree on the amount of rent owed for the time when the rental unit needed repairs. If the tenant can't agree on a reasonable amount, the tenant may need to go to court or use an arbitration or mediation service.

Risks: The defects may not be bad enough to make the rental unit legally uninhabitable. When the tenant withholds rent the landlord may give the tenant an eviction notice (a three-day notice to pay the rent or leave). If the tenant refuses to pay, the landlord will probably sue to evict the tenant. Then the tenant will have to prove to the court that the landlord violated the implied warranty of habitability. If the tenant wins the case, the landlord will be ordered to make the repairs, and the tenant will be ordered to pay a reasonable rent, which the tenant must pay within a few days. If the tenant wins but doesn't pay the ordered rent amount when it is due, the judge will enter a judgment for the landlord and the tenant probably will be evicted. If the tenant loses, the tenant will have to pay the rent and probably will be evicted.

Another risk of using this method is that if the tenant does not have a lease, the landlord may try to ignore the request for repairs and remove or punish the tenant by giving the tenant a 30-day notice to move. This type of eviction, known as a retaliatory eviction, is illegal.

Can a landlord penalize or evict a tenant for withholding rental payments or exercising the right to "repair and deduct"?

If a tenant has complained to the landlord or to a public housing authority about the uninhabitable conditions in a rental unit, or has given notice that unless the landlord makes needed repairs the tenant will use the "repair and deduct" remedy, the landlord cannot act in retaliation. This means that the landlord generally cannot evict the tenant, increase the rent, decrease the service or force the tenant to leave involuntarily within 180 days of the tenant's action, if the landlord's purpose is to get back at the tenant for exercising his or her rights.[20]

If a tenant feels that he or she is the victim of a retaliatory eviction or other action by a landlord, it is important to be able to document the repairs needed or the complaint made to the landlord. For this reason, a written notice of the damages to the landlord (with a copy retained by the tenant) is preferable to an oral notice. A tenant's rights and remedies for retaliatory

action by a landlord cannot be given up, but a lawyer may be needed to assert them. A tenant who believes that his or her landlord or property manager is acting with a retaliatory motive should consult a lawyer, legal aid service, or small claims court advisor immediately.

Go To the Local Authorities.

The State Housing Law and local housing codes are enforced by a city or county agency, usually called the Building Inspection or Housing Department. Violations which create immediate health hazards (such as rats or broken toilets) are enforced by the local Health Department. Violations which create fire hazards (such as trash piles in a closed area) are enforced by the local Fire Department.

Inspectors from these agencies respond to complaints of hazards and conduct on-site inspections to determine whether the conditions of a particular dwelling violate these laws. These agencies can issue citations and order landlords to make the needed repairs. Landlords who do not comply can be subject to penalties.[21] Therefore, an inspection report from one of these agencies that cites a code violation often will prompt a landlord to see that the repairs are made quickly.

Lawsuits for damages

The remedies of repair and deduct, leaving an uninhabitable rental, and rent withholding, allow the tenant to take action against the landlord without filing a lawsuit. However, the tenant may file a lawsuit if the landlord doesn't make needed repairs in a timely manner.[22] If the tenant prevails in this lawsuit, the court may award actual damages and "special damages" of not less than $100.00 and not more than $1,000. Special damages are costs incurred such as the rental of a motel room because the landlord failed to repair an unhabitable unit. Furthermore, the court could order the landlord to abate a nuisance and to repair an substandard conditions which significantly affect the health and safety of the tenants. This could result, for example, in a court ordering a landlord to fix a leaky roof, with the court retaining jurisdiction until the roof is fixed.

Before prevailing in this lawsuit, the tenant must meet the following criteria:

•The unit is deemed to be uninhabitable.

•After inspection of the premises, a housing inspector has notified in writing the landlord or agent of the obligation to repair the substandard conditions.

•The substandard conditions have existed and have not been repaired by the landlord beyond 60 days after the issuance of the written notice by the housing inspector.

•The substandard conditions were not caused by the tenant or the tenant's guests.

Some rental agreements contain provisions that award attorney's fees to the landlord if the landlord files a lawsuit against a tenant and wins. Even if the agreement doesn't say it, those same provisions also apply if the tenant sues the landlord and wins. That means that, the landlord could be required to reimburse the tenant for all or at least some of the cost of hiring an lawyer.[23]

Before filing a lawsuit the tenant should take these basic steps:

•Notify the landlord in writing about the needed repairs and keep a copy of the notice.

•Be specific about the problem and the required repairs.

•Give the landlord a reasonable time to make the repairs.

•Contact the local city or county building department, health department, or local housing agency and request an inspection.

•Gather evidence of the unhabitable condition so that the case could be proven.

•Discuss the case with a lawyer or legal aid society, or small claims court advisor.

•Understand what may be to accomplish a lawsuit, and also the risks involved.

If the landlord demands or collects rent, but doesn't correct one of the serious defects listed on pages 1-2 within 60 days after receiving written notice to repair it from an agency, such as the health or building department, and if the defects were not caused by the tenant or the tenant's guests, the tenant may file suit against the landlord for actual damages and a penalty. The tenant also may ask the court to order the landlord to make repairs needed to make the rental unit habitable.[24] The tenant can sue in small claims, municipal, or superior court depending on the amount of ther suit.

Resolving the complaint out of court.

Before filing suit, the tenant should consider having the complaint resolved out of court, through a dispute resolution program. If both the tenant and the landlord

agree, a neutral third party will work with both to reach a solution. Dispute resolution is easy, and can be inexpensive, and fast. For help in locating a dispute resolution program near the tenant, call the Department of Consumer Affairs, Consumer Information Center at (800) 952-5210.

Can tenants' security deposits be used to make repairs?

Landlords routinely require tenants to give a deposit in advance as security for complying with the rental agreement or lease. The security deposit is held by the landlord for the tenant. Because of this relationship, the rules that apply to the use and return of security deposits are strictly governed by state law.[25]

The landlord of residential property may use a reasonable amount of the security deposit only for specific purposes: toward unpaid rent, to repair damages caused by the tenant or his or her guests (not including ordinary wear and tear), for necessary cleaning of the premises when the tenant moves out, and to remedy certain violations of the rental agreement.[26]

Thus, if a tenant falls behind in the rent, or moves out and leaves the premises dirty or damaged because of his or her carelessness or acts, or does not leave the rental unit reasonably clean, the landlord may use a portion of the deposit to cover the late rent, or to clean or repair the unit.[27]

Generally, the landlord is responsible for repainting unsightly interior walls, replacing worn carpet and cleaning or replacing curtains or drapes as necessary before a new tenant moves in. This obligation exists because of the assumptions that all residential premises will undergo a certain amount of "ordinary wear and tear" from use, and that the costs for this should be borne by the owner of the property.[28] Similarly, repairs to the rental unit which are necessary due to damage not caused by the tenant or his or her guests must be paid for by the landlord.

If the tenant properly asserts his or her legal rights discussed in this fact sheet (such as withholding rent under appropriate circumstances), the landlord cannot legally use the security deposit to cover the withheld or reduced payment. Even after a tenant gives proper notice and moves from a fire, earthquake or flood damaged rental unit, the landlord may deduct only for costs not related to the fire, earthquake or flood damage.

The landlord cannot, under such circumstances, simply refuse to refund the tenant's deposit. The law requires that a tenant's refund, if any, and an itemized accounting of the use of any portion of the security deposit that is not refunded, be provided to the tenant within 21 days[29] after he or she moves out.

Who is responsible for damage to the rental unit caused by the tenant's personal property in the unit?

It is a basic principle of the law that every person is responsible for an injury which is caused by the person's lack of ordinary care in his or her conduct or in the management of his or her property.[30] A person who does not exercise ordinary care and who injures another's person or property is said to be "negligent." (Of course, a person also is legally responsible if his or her willful acts injure another's person or property.)

This principle is applied in the landlord-tenant relationship. Thus, the tenant has a duty to use ordinary care to preserve the unit in good condition and to repair any deteriorations or injuries to the unit which he or she causes negligently or purposefully.[31] However, the tenant is not responsible for ordinary wear and tear to the rental unit.[32]

For example, suppose that the tenant's aquarium turned over during an earthquake, that the spilled water ruined the landlord's hardwood floor, and that the aquarium was not prohibited in the lease or rental agreement. The tenant is not legally responsible for the damages unless he or she installed or maintained the aquarium negligently. If the landlord asserts such a claim, the landlord has the burden of demonstrating that the tenant was negligent.

Sometimes, a tenant will agree in a lease or rental agreement to correct defective conditions in the rental unit. This is called a "tenant's covenant to repair." Such a covenant usually obligates the tenant to repair all damage to the unit which occurs while the lease or rental agreement is in effect, except for ordinary wear and tear. Thus, in the aquarium example, a tenant who had agreed to such a covenant would be responsible for the damage which the spill caused to the hardwood floors, whether or not the tenant was negligent in installing or maintaining the aquarium. However, in spite of such a covenant, destruction of the premises usually shifts the burden of repair to the landlord.[33]

What happens to the lease or rental agreement if the rental unit has been destroyed?

Generally, if a rental unit has been completely destroyed, the lease or rental agreement terminates automatically.[34]

If a rental unit has been partially destroyed, the tenant may terminate the lease or the rental agreement before the end of its term, provided that: (1) the majority of the rental unit has been destroyed (or the rental unit had a

particular feature which caused the tenant to rent it, the landlord knew this, and this feature has been destroyed); and (2) the partial destruction was not due to the tenant's negligence.[35] Termination of the lease or rental agreement in the case of partial destruction is not automatic; the tenant must specifically elect to terminate it, and must communicate this decision to the landlord. (The notice should be in writing and should be sent by certified mail with return receipt requested, or should be personally delivered, in which case the tenants should request a receipt from the landlord. The tenant should retain a copy of the notice.)

If the rental unit has been partially destroyed, the tenant may choose to remain in it pending repairs, and in that event the lease or rental agreement will not be terminated. The rights of the landlord and tenant in this circumstance are discussed in the preceding sections of this legal guide.

There are two major exceptions to the rules in this section. The first occurs if the lease or rental agreement contains express provisions on termination in the event of destruction or partial destruction of the rental unit. Such provisions prevail over the general rules discussed in this section.

The second exception occurs if the landlord has promised in the lease or rental agreement to rebuild the premises. If the lease contains such a promise, the lease does not terminate in the event of destruction or partial destruction of the rental unit. However, a general promise by the landlord in the lease or rental agreement that he or she will repair the unit does not prevent the lease from terminating in the event of destruction or partial destruction.

If the lease or rental agreement gives either the landlord or the tenant the option of terminating it in the event of the rental unit's destruction or partial destruction, this option must be exercised in a reasonable period of time.

Even if the rental unit is destroyed and the lease is terminated, advance rental payments paid by the tenant are not required to be returned to him or her, unless the lease requires that they be returned.[36]

If the lease or rental agreement is terminated because the rental unit is totally or partially destroyed, the landlord must return the tenant's entire security deposit (less any rent due and unpaid at the time the unit was destroyed).[37]

Where can landlords or tenants obtain information or guidance on questions about their rights and responsibilities after fire, earthquake or flood damage?

The Department of Consumer Affairs, Consumer Information Center provides assistance information and referrals for tenants and landlords. Call 1-800-952-5210 between 8 a.m. and 5 p.m., Monday through Friday.

Local agencies also may be able to assist with questions about landlord and tenant responsibilities. These include local legal aid offices, local bar associations' lawyer referral services, senior citizens' organizations, small claims court advisor services, local apartment owners associations, and local rent control boards.

For additional information on landlord-tenant law, send a self-addressed, stamped envelope to Landlord/Tenant, P.O. Box 310, Sacramento, California 95802.

NOTICE: The Department of Consumer Affairs strives to make its legal guide accurate in every aspect as of the date of publication. However, this legal guide is only a guide, and is not a definitive statement of the law. Questions about the law's application to specific circumstances should be directed to an attorney.

ENDNOTES

1.Code of Civil Procedure section 1941.

2.Green v. Superior Court (1974) 10 Cal.3d 616, [111 Cal.Rptr.704]. Hinson v. Delis (1972) 26 Cal.App.3d 62. [102 Cal.Rptr.661].

3.Civil Code section 1928.

4.Civil Code sections 1929, 1941.2.

5.Civil Code section 1941.

6.Hinson v. Delis (1972) 26 Cal.App.3d 62 [102 Cal.Rptr.661].

7.Civil Code section 1941.1.

8. Health and Safety Code sections 17900-17995.

9.Civil Code sections 1929, 1941.2.

10. Civil Code section 1941.2(a).

11. Civil Code section 1941.2(b).

12. Civil Code section 1942.1.

13. Civil Code section 1942.

14. Civil Code section 1942.5.

15. Civil Code section 1942.

16. Civil Code Section 1942(a)

17. Green v. Superior Court (1974) 10 Cal.3d 616 [111 Cal.Rptr.704].

18. Green v. Superior Court (1974) 10 Cal.3d 616 [111 Cal.Rptr.704].

19. Some counties have establised a Rent Escrow which allows tenants to deposit rents into an escrow account rather than paying the landlord. When repairs are made, the escrow administrator will return the rents minus administrative fees.

20. Civil Code section 1942.5

21. Health & Safety Code section 17995.

22. Civil Code section 1942(d).

23. Civil Code section 1717.

24. Civil Code section 1942.4.

35. Civil Code section 1932(2).

36. Friedman v. Isenbruck (1952) 111 Cal.App.2d 326 [244 P.2d 718]; Pedro v. Potter (1926) 197 Cal. 751 [242 P. 926]; Harvey v. Weisbaum (1911) 159 Cal. 265 [113 P. 656].

37. Civil Code section 1950.5; see Groh v. Kover's Bull Pen, Inc. (1963) 221 Cal.App.2d 611 [34 Cal.Rptr. 637].

25. Civil Code section 1950.5.

26. Civil Code section 1950.5(b).

27. Civil Code section 1950.5(b).

28.Civil Code section 1950.5(e).

29. Civil Code section 1950.5(f).

30. See Civil Code section 1714.

31. Civil Code sections 1928, 1929.

32. Civil Code section 1950.5(e).

33.California Real Estate Law and Practice, "Landlord and Tenant," section 170.51.

34.Freidman, Garcia and Hagarty, Landlord-Tenant, sections 7:319-7:321 (1993); Civil Code section 1933(4).

1. Code of Civil Procedure section 1941.

2.

3. Civil Code section 1928.

4. Civil Code section 1929.

5.Civil Code section 1941.

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7.Civil Code section 1941.1.

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9.Civil Code section 1929.

10.Civil Code section 1941.

11.

12.

13.Civil Code section 1942.

14.Civil Code section 1942.5(a).

15.

16.Civil Code section 1942(a).

17.Green v. Superior Court (1974) 10 Cal.3d 616, 111 Cal.Rptr. 704.

18. Green v. Superior Court (1974) 10 Cal.3d 616.

19.. Some counties have established a Rent Escrow Account which allows tenants to deposit rents into an escrow account reather than paying the landlord. When repairs are made, the escrow administrator will retunr the rents minus adminstrative fees.

20.

:ivil Code section 1942(d).

Civil Code section 1717.

Civil Code section 1942.4, as amended by stats. 1992, ch 2574, §1.